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Court File No.: T-347-22

FEDERAL COURT

BETWEEN:

CANADIAN CONSTITUTION FOUNDATION

Moving Party / Applicant

– and –

ATTORNEY GENERAL OF CANADA

Responding Party / Respondent

Application for Judicial Review under Sections 18 and 18.1 of the
Federal Courts Act, R.S.C. 1985, c. F-7.

MOTION RECORD OF THE MOVING PARTY / APPLICANT, CANADIAN CONSTITUTION FOUNDATION

Re: Amended Notice of Application of Judicial Review

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FEDERAL COURT

BETWEEN:

CANADIAN CONSTITUTION FOUNDATION

Moving Party / Applicant

– and –

ATTORNEY GENERAL OF CANADA

Responding Party / Respondent

Application for Judicial Review under Sections 18 and 18.1 of the
Federal Courts Act, R.S.C. 1985, c. F-7.

NOTICE OF MOTION

TAKE NOTICE THAT the Moving Party, the Canadian Constitution Foundation will make a motion to the Court in writing under Rule 369 of the *Federal Courts Rules*, SOR/98-106.

THE MOTION IS FOR:

1. An Order pursuant to Rule 75 granting leave to the Moving Party to file an Amended Notice of Application of Judicial Review in the within proceeding.
2. An order pursuant to Rule 317 directing the Responding Party, the Attorney General of Canada, to send to the Moving Party and the Registry certified copies of the Record of materials before the Governor in Council (“Record”) in respect of the *Proclamation Revoking the Declaration of a Public Order Emergency*, SOR/2022-26, which Record shall include, without limitation, any “record[s] used for or reflecting communications or discussions between ministers of the Crown on matters relating to the making of government

decisions or the formulation of government policy,” under s. 39(2)(d) of the *Canada Evidence Act*, RSC 1985, c C-5, including, without limitation, minutes of the Incident Response Group, and electronic records such as, without limitation, emails, texts and other electronic correspondence.

3. Such further and other relief as the Moving Party may request and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

1. On February 23, 2022, the Moving Party issued a Notice of Application for Judicial Review in the within proceeding on February 23, 2022, in respect of the *Proclamation Declaring a Public Order Emergency*, SOR/2022-20 (“*Emergency Proclamation*”), made pursuant to section 17(1) of the *Emergencies Act*, RSC 1985, c 22 4th Supp.
2. On February 23, 2022, the *Emergency Proclamation* was revoked by the *Proclamation Revoking the Declaration of a Public Order Emergency*, SOR/2022-26 (“*Revocation Proclamation*”).
3. The Moving Party brings this motion pursuant to Rules 75, 317 and 369 of the *Federal Courts Rules*.
4. Such further and other grounds as the Moving Party may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The Affidavit of Madeleine Ross, affirmed February 28, 2022;
2. The Written Representations of the Moving Party;
3. The Proposed Amended Notice of Application of Judicial Review dated March 18, 2022;
and
4. Such further and other evidence as the Moving Party may advise and this Honourable Court may permit.

April 1, 2022



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FEDERAL COURT

BETWEEN:

CANADIAN CONSTITUTION FOUNDATION

Moving Party / Applicant

– and –

ATTORNEY GENERAL OF CANADA

Responding Party / Respondent

Application for Judicial Review under Sections 18 and 18.1 of the
Federal Courts Act, R.S.C. 1985, c. F-7.

**WRITTEN REPRESENTATIONS OF THE MOVING PARTY / APPLICANT,
CANADIAN CONSTITUTION FOUNDATION**

I. OVERVIEW

1. The Moving Party, the Canadian Constitution Foundation, brings this Motion:
 - a. for an order pursuant to Rule 75 granting leave from this Honourable Court to file an Amended Notice of Application of Judicial Review (“Amended Notice”) in the within proceeding; and
 - b. for an order pursuant to Rule 317 directing the Responding Party, the Attorney General of Canada, to send to the Moving Party and the Registry certified copies of the Record of materials before the Governor in Council (“Record”) in respect of the *Proclamation Revoking the Declaration of a Public Order Emergency*, SOR/2022-26, which Record shall include, without limitation, any “record[s]

used for or reflecting communications or discussions between ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy,” under s. 39(2)(d) of the *Canada Evidence Act*, RSC 1985, c C-5, including, without limitation, minutes of the Incident Response Group, and electronic records such as, without limitation, emails, texts and other electronic correspondence.

2. The shared premise for both orders is that the Record for the *Proclamation Revoking the Declaration of a Public Order Emergency*, SOR/2022-26 (“*Revocation Proclamation*”), in the exceptional circumstances of this case, is in substance part of the Record for the *Proclamation Declaring a Public Order Emergency*, SOR/2022-20 (“*Emergency Proclamation*”), which the Moving Party has already requested pursuant to Rule 317.

II. BACKGROUND

3. The Governor-in-Council issued the *Emergency Proclamation* on February 14, 2022, pursuant to section 17(1) of the *Emergencies Act*, RSC 1985, c 22 4th Supp. The *Emergency Proclamation* declared that a “public order emergency” existed “throughout Canada” and “necessitates” the taking of special temporary measures for dealing with the emergency.
4. The next day, on February 15, 2022, the Governor-in-Council issued: (a) the *Emergency Measures Regulations*, P.C. 2022-107, SOR/2022-21 (“*Emergency Measures*”), and (b) the *Emergency Economic Measures Order*, P.C. 2022-108, SOR/2022-22 (“*Economic Measures*”), both pursuant to section 19(1) of the *Emergencies Act*.
5. Pursuant to section 18(1) of the *Emergencies Act*, a motion of confirmation for a public order emergency must be laid before each House of Parliament within seven days and considered in accordance with the procedure laid down in section 58, which provides in relevant part:

(1) Subject to subsection (4), a motion for confirmation of a declaration of emergency, signed by a minister of the Crown, together with an explanation of the reasons for issuing the declaration and a report on any consultation with the lieutenant governors in council of the provinces with respect to the declaration, shall be laid before each House of Parliament within seven sitting days after the declaration is issued. ...

(5) Where a motion is laid before a House of Parliament as provided in subsection (1) or (4), that House shall, on the sitting day next following the sitting day on which the motion was so laid, take up and consider the motion.

(6) A motion taken up and considered in accordance with subsection (5) shall be debated without interruption and, at such time as the House is ready for the question, the Speaker shall forthwith, without further debate or amendment, put every question necessary for the disposition of the motion.

(7) If a motion for confirmation of a declaration of emergency is negated by either House of Parliament, the declaration, to the extent that it has not previously expired or been revoked, is revoked effective on the day of the negative vote and no further action under this section need be taken in the other House with respect to the motion.

In addition, if a declaration of public order emergency is not confirmed within 30 days, it expires pursuant to section 19(2) of the *Emergencies Act*.

6. A motion confirming the *Emergency Proclamation* was moved in the House of Commons by the Hon. Marco Mendicino, Minister of Public Safety, on February 17, 2022.¹ The motion was debated in the House of Commons on February 17, 19, 20 and 21, 2022.² In this debate, a central question was whether the protest and blockades at issue met the definition of a “national emergency” under section 3 of the *Emergencies Act*, on the basis that they “cannot be effectively dealt with under any other law of Canada”.³

¹ [Canada. House of Commons. *House of Commons Debates*, vol. 151, No. 33, 1st Sess., 44th Parl., February 17, 2022](#) at p. 2347.

² [Canada. House of Commons. *House of Commons Debates*, vol. 151, No. 33, 1st Sess., 44th Parl., February 17, 2022](#); [Canada. House of Commons. *House of Commons Debates*, vol. 151, No. 34, 1st Sess., 44th Parl., February 19, 2022](#); [Canada. House of Commons. *House of Commons Debates*, vol. 151, No. 35, 1st Sess., 44th Parl., February 20, 2022](#); [Canada. House of Commons. *House of Commons Debates*, vol. 151, No. 36, 1st Sess., 44th Parl., February 21, 2022](#).

³ [Canada. House of Commons. *House of Commons Debates*, vol. 151, No. 33, 1st Sess., 44th Parl., February 17, 2022](#): Mr. Yves-François Blanchet, pp. 2349, 2356, 2357; Ms. Kristina Michaud, p. 2351, 2364; Hon. Candice Bergen, p. 2351; Ms. Alain Therrien, p. 2353; Mr. Luc Berthold, p. 2355; Hon. David Lametti, p. 2362; Hon. Bill Blair, p. 2365; Mr. Dane Lloyd, p. 2366-8; Mr. Arif Virani, p. 2368; Mr. Frank Caputo, pp. 2375, 2398; Ms. Julie Vignola, pp. 2398, 2464; Mr. Glen Motz, pp. 2399, 2401; Mr. Mark Strahl, pp. 2401, 2403; Mr. Alain Therrien, pp. 2410, 2411; Mr. Kelly McCauley (p. 2414); Hon. Michelle Rempel Garnier, pp. 2416, 2417; Ms. James Bezan, pp. 2433, 2434; Mr. Michael Cooper, p. 2345; Mr. Simon-Pierre Savard-Tremblay, pp. 2437, 2438, 2349; Mr. Rick Perkins, pp. 2441, 2442; Mr. Larry Brock, p. 2448; Mr. Mario Simard, pp. 2449, 2458; Mr. Tony Baldinelli, p. 2452, 2453.

[Canada. House of Commons. *House of Commons Debates*, vol. 151, No. 34, 1st Sess., 44th Parl., February 19, 2022](#): Mr. Maxime Blanchette-Joncas, pp. 2470, 2471, 2476; Mr. Sébastien Lemire, p. 2472; Mr. Michael Barrett, pp. 2478, 2479, 2480; Mrs. Marilène Gill, p. 2479; Hon. Judy A. Sgro, p. 2482; Mr. Adam

7. On February 21, 2022, in the afternoon, Prime Minister Trudeau held a press conference in which he stated, with reference to the time frame when the *Emergency Proclamation* was issued, that “local and provincial authorities needed more tools to restore order and keep people safe”.⁴

Chambers, pp. 2482, 2483; Mrs. Laila Goodridge, p. 2492; Mr. Doug Shipley, pp. 2494, 2496; Ms. Kristina Michaud, p. 2498; Mr. Maninder Sidhu, pp. 2502, 2503; Mr. Francis Scarlapeggia, p. 2505; Mr. Gabriel Ste-Marie, pp. 2505, 2507, 2508, 2509, 2510; Mr. Sajraj Singh Hallan, pp. 2511, 2513; Mr. René Villemure, pp. 2515, 2516, 2517; Mr. Luc Desilets, pp. 2518, 2519; Mrs. Tracy Gray, p. 2521; Mr. Jamie Schmale, pp. 2530, 2531; Mr. Marcus Powlowski, pp. 2531; Mrs. Anna Roberts, p. 2532; Mr. Yvan Baker, pp. 2366, 2367; Mr. Pat Kelly, 2538; Mr. John McKay, p. 2546; Ms. Julie Dzerowicz, p. 2546; Hon. Rob Oliphant, p. 2551; Mr. Marty Morantz, pp. 2552, 2553; Mr. Greg McLean, p. 2553; Ms. Christina Nirmandin, p. 2557; Mr. Jean-Denis Garon, p. 225; Mr. Gary Anandasengaree, p. 2566; Ms. Leslyn Lewis, pp. 2570, 2571, 2572; Mr. Stephen Ellis, p. 2573; Mr. Denis Trudel, pp. 2575, 2576; Ms. Andréanne Larouche, pp. 2577, 2578; Mr. Blake Richards, p. 2579; Mr. Richard Lehou, pp. 2582, 2583; Mr. Jennifer O’Connell, p. 2586; Mr. Gérard Deltell, pp. 2587, 2589; Mr. Randy Hoback, p. 2591; Mr. Chris Warkentin, p. 2599; Mr. Taylor Bachrach, p. 2604; Mrs. Julie Vignola, pp. 2608, 2609; Mr. Len Webber, p. 2516; Mr. Garnett Genuis, p. 2619.

[Canada. House of Commons. *House of Commons Debates*, vol. 151, No. 35, 1st Sess., 44th Parl., February 20, 2022](#): Mr. Larry Brock, p. 2623; Ms. Louise Chabot, p. 2629; Ms. Monique Pausé, p. 2632; Mr. Michael Kram, p. 2633; Mr. John Williamson, p. 2635; Mr. John Barlow, p. 2639, 2641; Mr. Ryan Turnbull, p. 2647, 2648; Hon. Ed Fast, p. 2653; Ms. Nathalie Sinclair-Desgagné, pp. 2668, 2669; Mr. Rhéal Fortin, p. 2671; Mr. Kusmierczyk, p. 2674; Mr. Francis Drouin, p. 2683; Ms. Laurel Collins, p. 2689; Mr. Dan Mazier, p. 2695; Ms. Melissa Lantsman, p. 2697; Mr. Yasir Naqvi, pp. 2700, 2701, 2702; Ms. Iqra Khalid, p. 2703; Mrs. Jenica Atwin, p. 2706; Mrs. Shannon Stubbs, p. 2708; Mr. Kevin Waugh, p. 2711; Mrs. Marilène Gill, p. 2713; Mrs. Claude DeBellfeuille, p. 2714; Mr. Brad Redekopp, pp. 2716, 2718; Mr. Gary Vidal, p. 2720; Ms. Lena Letlege Diabe, pp. 2722, 2723; Mr. Terry Duguid, p. 2724; Mr. Bernard Généreux, p. 2728; Mr. Brendan Hanley, p. 2732; Mr. Kelley McCauley, p. 2735; Mr. Mario Beaulieu, p. 2739; Mr. Martin Champoux, pp. 2740, 2741; Mr. Patrick Weiler, p. 2743; Mr. Andy Fillmore, p. 2745; Mr. Philip Lawrence, p. 2748; Mr. Philip Lawrence, p. 2750; Mrs. Élisabeth Brière, p. 2753; Mr. Don Davies, p. 2760; Mr. Chad Collins, pp. 2762, 2763; Mr. Serge Cormier, 2764; Mr. Van Popta, pp. 2765, 2766, 2767; Mrs. Kelly Block, p. 2768.

[Canada. House of Commons. *House of Commons Debates*, vol. 151, No. 36, 1st Sess., 44th Parl., February 21, 2022](#): Mrs. Rosemary Falk, pp. 2774, 2775; Mr. John Nater, pp. 2776, 2777; Mr. Jeremy Patzer, p. 2780; Mr. Dave Epp, p. 2780; Mr. Tim Louis, p. 2783; Mr. Marc Serré, pp. 2785, 2786; Mr. Dave MacKenzie, pp. 2787, 2788; Mr. Richard Bragdon, p. 2789; Mrs. Marie-Hélène Gaudreau, p. 2792; Ms. Bérubé, pp. 2793, 2794; Mr. Eric Melillo, p. 2797; Mrs. Sherry Romanado, pp. 2799, 2800; Ms. Ruby Sahota, p. 2802; Mr. Luc Thériault, p. 2804; Mrs. Caroline Desbiens, p. 2806; Mr. Corey Tochor, p. 2808; Mr. Dan Albas, pp. 2809, 2810; Mrs. Thomas, p. 2811; Ms. Ya’ara Saks, p. 2816; Hon. Michael Chong, pp. 2850, 2851, 2852; Mr. Larry Maguire, pp. 2853, 2854; Ms. Racqle Dancho, p. 2869; Mr. Blaine Calkins, p. 2872; Mr. Stéphane Bergeron, p. 2878.

⁴ Affidavit of Madeleine Ross, Sworn February 28, 2022, Exhibit A, p. 1

8. The House of Commons voted in favour of the motion on the evening of February 21, 2022.⁵
9. A motion confirming the *Emergency Proclamation* was moved in the Senate by the Hon. Marc Gold, the Government Representative in the Senate, on February 22, 2022.⁶ The motion was debated in the Senate on February 22 and 23, 2022.⁷ As in the House of Commons, a central question in the Senate was whether the protest and blockades met the definition of a “national emergency” under section 3 of the *Emergencies Act*, on the basis that they could not “be effectively dealt with under any other law of Canada”.⁸
10. On the morning of February 23, 2022, while debate in the Senate about the *Emergency Proclamation* was ongoing, the Moving Party issued and served its Notice of Application for Judicial Review (“Notice”) in the within proceeding. A central argument in the Notice is that the protest and blockades did not meet the definition of a “national emergency” under section 3 of the *Emergencies Act*, for the reasons raised in the House of Commons and the Senate.⁹
11. That same afternoon, the Prime Minister held a press conference in which he announced the revocation of *Emergency Proclamation*. The Prime Minister stated: “We are confident that existing laws and bylaws are now sufficient to keep people safe”.¹⁰

⁵ [Canada. House of Commons. *House of Commons Debates*, vol. 151, No. 36, 1st Sess., 44th Parl., February 21, 2022](#), p. 2883.

⁶ [Canada. Senate. *Debates of the Senate*, vol. 153, No. 19, 1st Sess., 44th Parl., February 22, 2022](#), p. 548.

⁷ [Canada. Senate. *Debates of the Senate*, vol. 153, No. 19, 1st Sess., 44th Parl., February 22, 2022](#); [Canada. Senate. *Debates of the Senate*, vol. 153, No. 20, 1st Sess., 44th Parl., February 23, 2022](#).

⁸ [Canada. Senate. *Debates of the Senate*, vol. 153, No. 19, 1st Sess., 44th Parl., February 22, 2022](#): Senator Marc Gold, pp. 559, 572, 579, 589, 592, 605; Senator Claude Carignan, pp. 572, 589, 598, 603, 604, 605, 606; Senator Donald Plett, p. 596; Senator Jean-Guy Dagenais, p. 598, p. 611, 612; Senator Jane Cordy, pp. 601, 602; Senator Yuen Pau Woo, p. 614; Senator Percy Downe, p. 617; Senator Denise Batters, p. 621; Senator Kim Pate, pp. 625, 628.

; [Canada. Senate. *Debates of the Senate*, vol. 153, No. 20, 1st Sess., 44th Parl., February 23, 2022](#): Senator Elizabeth Marshall, p. 636; Senator Dennis Patterson, p. 638; Senator Julie Miville-Dechéne, p. 639; Senator Leo Housakos, p. 642; Senator Colin Deacon, pp. 644, 645; Senator Pamela Wallin, p. 656; Senator Donald Plett, pp. 663, 665, 666; Senator Davvi Wells, p. 685.

⁹ *Canadian Constitution Foundation v. Attorney General of Canada*, Notice of Application for Judicial Review, Court File No.: T-347-22.

¹⁰ Affidavit of Madeleine Ross, Sworn February 28, 2022, Exhibit B, p. 2.

12. Minutes after the Prime Minister's announcement, Mr. Gold withdrew his motion before the Senate.¹¹ The *Revocation Proclamation* was issued later that evening, pursuant to section 22 of the *Emergencies Act*. Through the operation of section 26(2) of the *Emergencies Act*, the *Revocation Proclamation* had the effect of immediately terminating the *Emergency Measures* and *Economic Measures*.

III. SUBMISSIONS

13. The Moving Party previously requested the Record for the *Emergency Proclamation* by way of a Rule 317 Request included with its Notice. After the Moving Party served its Notice, the federal government issued the *Revocation Proclamation*. The Moving Party therefore now also requests the Record for the *Revocation Proclamation*. The Moving Party offers two arguments in support of this request:
- a. The *Emergency Proclamation* and the *Revocation Proclamation* are temporally and functionally interconnected; and
 - b. It would be an inefficient use of judicial resources for the Moving Party to have to commence a fresh Application for Judicial Review in relation to the *Revocation Proclamation* in order to request the Record for that decision.

Point 1: The *Emergency Proclamation* and *Revocation Proclamation* are temporally and functionally interconnected

14. The Moving Party's position is that the Record for the *Revocation Proclamation* falls within the scope of a Rule 317 Request arising from an Application for Judicial Review of the *Emergency Proclamation*.
15. The *Emergency Proclamation* and the *Revocation Proclamation* are two separate legal instruments, each in theory the product of a separate decision by the Governor in Council and with its own Record. However, this is a truly exceptional situation in which any formal legal distinction between the two is overwhelmed by the substantive reality that they are deeply connected to one another, both temporally and functionally.

¹¹ Canada. Senate. Debates of the Senate, vol. 153, No. 18, 1st Sess., 44th Parl., February 21, 2022, p. 548.

16. The sequence of events surrounding the issuance of the two *Proclamations* makes this clear. The *Revocation Proclamation* was issued a matter of days after the *Emergency Proclamation*. In addition, only minutes before Prime Minister Trudeau announced the *Revocation Proclamation* at a press conference outside Parliament, the federal government had been defending the legality of the *Emergency Proclamation* on the floor of the Senate. If the motion confirming the *Emergency Proclamation* had not been passed by the Senate, the *Emergency Proclamation* would have been revoked immediately pursuant to section 58(7) of the *Emergencies Act*. The *Revocation Proclamation*, by design, pre-empted the potential defeat in the Senate of the motion confirming the *Emergency Proclamation*.
17. This dramatic turn of events is consistent with the Moving Party's theory of the underlying Application for Judicial Review. The Moving Party states that the Record for the *Emergency Proclamation* will show that doubts were raised from the very outset that the blockades and protest did not meet the test for a national emergency under section 3 of the *Emergencies Act*, and that these doubts persisted even after the *Emergency Proclamation* was issued on February 14, 2022. The reality is that the *Emergency Proclamation* was a standing agenda item for the federal cabinet, which remained seized of the matter throughout this time period.
18. The federal government's own public pronouncements regarding cabinet deliberations on the use of the *Emergencies Act* show that this was in fact the case. The cabinet committee which discussed and considered responses to the protest and blockades is the Incident Response Group. In the Senate debates on the motion to confirm the *Emergency Proclamation*, the Hon. Marc Gold, Government Representative in the Senate, informed Senators that: "The government made that decision after carefully considering the situation across Canada, continuously working with public officials and police forces nationwide and holding in-depth discussions over the course of three meetings of Cabinet's Incident Response Group on February 10, 12 and 13, 2022."¹² Moreover, it is a matter of public record that Prime Minister Trudeau convened the Incident Response Group on at least eleven occasions – on February 10, 12, 13, 16, 17, 18, 19, 20, 21, 22 and 23 – to deliberate over recourse to the *Emergencies Act*, and issuing the *Emergency Proclamation*, the

¹² [Canada. Senate. Debates of the Senate, vol. 153, No. 19, 1st Sess., 44th Parl., February 22, 2022](#), p. 561.

Emergency Measures and Economic Measures, and the *Revocation Proclamation*.¹³ Indeed, the Incident Response Group appears to have met immediately prior to Prime Minister’s press conference, at which he announced the *Revocation Proclamation*.

19. The Moving Party also states that the Record for the *Revocation Proclamation* will show that the potential defeat of the motion confirming the *Emergency Proclamation* in the Senate – and possibly also the commencement of the underlying Application for Judicial Review – provided support to those in the Incident Response Group who raised doubts that the legal requirements for a public order emergency had ever existed. In order to pre-empt defeat in the Senate and in this Honourable Court, the *Revocation Proclamation* was issued, and the public order emergency brought to an abrupt end. The content of the Record for the *Revocation Proclamation* will demonstrate whether or not the Moving Party’s theory is correct – which is the very point of the Respondent’s legal duty to produce the Record.
20. Additionally, in light of the federal government’s public statements that the Incident Response Group discussed the use of the *Emergencies Act* prior to issuing the *Emergency Proclamation*, through to issuing the *Revocation Proclamation*, the Record will presumably include cabinet deliberations, meaning “record[s] used for or reflecting

¹³ **February 10, 2022** (<https://pm.gc.ca/en/news/readouts/2022/02/10/prime-minister-justin-trudeau-convenes-incident-response-group>) (first meeting)

February 12, 2022 (<https://pm.gc.ca/en/news/readouts/2022/02/12/prime-minister-justin-trudeau-convenes-incident-response-group-ongoing>) (second meeting)

February 13, 2022 (<https://twitter.com/JustinTrudeau/status/1493071646676201474>) (third meeting)

February 16, 2022 (<https://pm.gc.ca/en/news/readouts/2022/02/16/prime-minister-justin-trudeau-convenes-incident-response-group-ongoing>) (fourth meeting)

February 17, 2022 (<https://pm.gc.ca/en/news/readouts/2022/02/16/prime-minister-justin-trudeau-convenes-incident-response-group-ongoing>) (fifth meeting)

February 18, 2022 (<https://pm.gc.ca/en/news/readouts/2022/02/18/prime-minister-justin-trudeau-convenes-sixth-incident-response-group>) (sixth meeting)

February 19, 2022 (<https://pm.gc.ca/en/news/readouts/2022/02/19/prime-minister-justin-trudeau-convenes-seventh-incident-response-group>) (seventh meeting)

February 20, 2022 (<https://pm.gc.ca/en/news/readouts/2022/02/20/prime-minister-justin-trudeau-convenes-eighth-incident-response-group>) (eighth meeting)

February 21, 2022 (<https://pm.gc.ca/en/news/itineraries/2022/02/21/prime-ministers-itinerary-monday-february-21-2022>) (ninth meeting)

February 22, 2022 (<https://pm.gc.ca/en/news/itineraries/2022/02/22/prime-ministers-itinerary-tuesday-february-22-2022>) (tenth meeting)

February 23, 2022 (<https://pm.gc.ca/en/news/itineraries/2022/02/23/prime-ministers-itinerary-wednesday-february-23-2022>) (eleventh meeting)

communications or discussions between ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy” under s. 39(2)(d) of the *Canada Evidence Act*. These must include cabinet minutes, as well as minutes of cabinet committees, such as the Incident Response Group.

21. The Moving Party further states and asks that any Order issued by this Honourable Court make clear, that cabinet deliberations will consist not only of formal cabinet minutes, but also of electronic records including emails, texts and other electronic correspondence.

Point 2: It would be an inefficient use of judicial resources to commence a fresh Application for Judicial Review in order to request the Record for the *Revocation Proclamation*

22. If this Motion is not granted, the Moving Party will have to bring a fresh Application for Judicial Review of the *Revocation Proclamation*. The Record for the *Revocation Proclamation* would then become the basis of a Rule 317 Request in relation to that new legal proceeding, and the Moving Party would seek to have the underlying and fresh Applications for Judicial Review consolidated pursuant to Rule 105.
23. It would be an inefficient use of judicial resources to have to proceed in this manner. Moreover, it could unnecessarily delay the hearing of the underlying Application for Judicial Review, which this Honourable Court has scheduled to be heard on an expedited basis.

IV. REMEDY SOUGHT

24. The Moving Party, the Canadian Constitution Foundation, respectfully requests:
 - a. An order pursuant to Rule 75 granting the Moving Party leave to file an Amended Notice of Application of Judicial Review (“Amended Notice”) in the within proceeding;
 - b. An order pursuant to Rule 317 directing the Responding Party, the Attorney General of Canada, to send to the Moving Party and the Registry certified copies of the Record of materials before the Governor in Council (“Record”) in respect of the *Proclamation Revoking the Declaration of a Public Order Emergency*, SOR/2022-26, which Record shall include, without limitation, any “record[s] used

for or reflecting communications or discussions between ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy,” under s. 39(2)(d) of the *Canada Evidence Act*, RSC 1985, c C-5, including, without limitation, minutes of the Incident Response Group, and electronic records such as, without limitation, emails, texts and other electronic correspondence; and

- c. Such further and other relief as the Moving Party may request and this Honourable Court may permit.

April 1, 2022



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Toronto, Ontario M5H 1T1

Court File No.:

FEDERAL COURT

BETWEEN:

CANADIAN CONSTITUTION FOUNDATION

Applicant

– and –

ATTORNEY GENERAL OF CANADA

Respondent

Application for Judicial Review under Sections 18 and 18.1 of the
Federal Courts Act, R.S.C. 1985, c. F-7.

AMENDED NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at 180 Queen Street West, Toronto, Ontario, M5V 3L6.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, **WITHIN 10 DAYS** after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

February 22, 2022

Issued by:

Address of local office: 180 Queen Street West
Suite 200
Toronto, Ontario
M5V 3L6

TO: **ATTORNEY GENERAL OF CANADA**
Ontario Regional Office
Department of Justice Canada
120 Adelaide Street West
Suite #400
Toronto, Ontario M5H 1T1

APPLICATION

This is an Application pursuant to section 18.1 of the *Federal Courts Act*, RSC c F-7 for judicial review of: (a) the *Proclamation Declaring a Public Order Emergency*, SOR/2022-20 (“*Emergency Proclamation*”), made pursuant to section 17(1) of the *Emergencies Act*, RSC 1985, c 22 4th Supp (“the *Emergencies Act*”); (b) the *Emergency Measures Regulations*, P.C. 2022-107, SOR/2022-21 (“*Emergency Measures*”), made pursuant to section 19(1) of the *Emergencies Act*; and (c) the *Emergency Economic Measures Order*, P.C. 2022-108, SOR/2022-22 (“*Economic Measures*”), made pursuant to section 19(1) of the *Emergencies Act*.

THE APPLICANT MAKES APPLICATION FOR:

1. An order declaring unlawful and quashing the *Emergency Proclamation*.
2. An order declaring unlawful and quashing the *Emergency Measures*.
3. An order declaring unlawful and quashing the *Economic Measures*.
4. An order pursuant to section 52(1) of the *Constitution Act, 1982*, declaring the *Emergency Measures* to be unconstitutional and of no force or effect.
5. An order pursuant to section 52(1) of the *Constitution Act, 1982*, declaring the *Economic Measures* to be unconstitutional and of no force or effect.
6. An order pursuant to Rule 383 of the *Federal Courts Rules*, SOR/98-106 assigning this proceeding to case management.
7. An order pursuant to Rule 306 of the *Federal Courts Rules* to admit the affidavit of Madeleine Ross.
8. An order pursuant to Rule 105 of the *Federal Court Rules* that this proceeding be joined with *Canadian Civil Liberties Association v. Attorney General of Canada*, Court File No. T-316-2.
9. An order directing the Respondent to deliver the Record to the Applicant on an urgent basis pursuant to Rule 317 of the *Federal Courts Rules*, because of the inherently time limited nature of a public order emergency.

10. An order directing the Respondent to deliver those portions of the record to the Applicant over which it asserts any privileges under Rule 318, including pursuant to sections 38 (national security) and 39 (cabinet confidences) of the *Canada Evidence Act*, RSC 1985, c C-5, on an urgent, counsel-only basis pursuant to a confidentiality undertaking, because of the inherently time limited nature of a public order emergency.
11. The hearing of this matter on an expedited basis, because of the inherently time limited nature of a public order emergency.
12. An order that there be no costs of this proceeding.
13. Such further and other relief as counsel may advise and as this Honourable Court may deem just.

THE GROUNDS FOR THE APPLICATION ARE:

A. Overview

1. This is an urgent Application for Judicial Review of the federal cabinet's decision to trigger and exercise the extraordinary powers contained in the *Emergencies Act* on February 14 and 15, 2022.
2. The *Emergencies Act* has a dark and troubled history in Canada. The *Emergencies Act* was originally enacted in 1988 to replace the *War Measures Act* ("WMA"), which was used during the Second World War to intern Japanese Canadians and Italian Canadians, and which was abused during the FLQ Crisis in Quebec in 1970. In direct response to this history, the *Emergencies Act* sets out a carefully crafted and demanding set of legally binding conditions that must be satisfied before it may be triggered, to ensure that it is used only as an absolute last resort, and for not a moment longer than necessary.
3. The *Emergencies Act* has never been invoked before. Over the decades since it was passed, Canada has weathered terrorist attacks, economic hardship, and an unprecedented global health pandemic without ever needing to resort to the incredible powers contained in the *Emergencies Act*.
4. The question on this Application is whether the strict legal requirements of the *Emergencies Act* were met before the federal cabinet issued the *Emergency Proclamation*, the

Emergency Measures, and the *Economic Measures*, in response to protests in Ottawa and border blockades.

5. We submit that the answer to that question is that those legal requirements were not met.

6. The *Emergencies Act* vests the federal cabinet with the extraordinary power to unilaterally proclaim a public order emergency. Such a proclamation serves *de facto* as a temporary constitutional amendment. Under the *Emergencies Act*, after the federal cabinet proclaims a public order emergency, vast legislative authority is delegated to the cabinet. This authority encompasses the power to create new criminal offences and police powers, without recourse to Parliament, advance notice or public debate. The *Emergencies Act* also grants the federal cabinet legislative power in core areas of provincial jurisdiction, such as property and civil rights, without any requirement for provincial consultation or consent.

7. Because of its profound effects on Canada's federal democracy, the grave risk of executive overreach, and the government's past abuse of emergency powers that this legislation was specifically intended to prevent, the courts should regard the *Emergencies Act* as a quasi-constitutional statute and interpret it strictly.

8. The federal cabinet did not have reasonable grounds for concluding there was a public order emergency that justified invoking the *Emergencies Act*, no matter how challenging and difficult it perceived the ongoing protests to be. Invoking the *Emergencies Act* was not absolutely necessary, as the law requires. Federal, provincial and municipal law enforcement already had all of the legal tools and authorities they needed to respond to the protests. Their perceived failure to respond effectively does not in itself authorize the government to invoke the *Emergencies Act*. The stringent conditions set by the *Emergencies Act* for declaring a public order emergency, and thus triggering the vast powers contemplated by the *Emergencies Act*, were not met.

9. In addition, the *Emergency Measures* and the *Economic Measures* violate the *Charter*. First, the prohibitions created by the *Emergency Measures* impose the threat of fine or imprisonment on a broad range of conduct, and, in so doing, risk a chilling effect on otherwise legitimate forms of expression. Second, the *Economic Measures* require banks to disclose otherwise private banking information to the police. Under the law, this amounts to a warrantless and unreasonable search of the private banking information of Canadian citizens. Both the

Emergency Measures and the *Economic Measures* create clear violations of sections 2, 7 and 8 of the *Charter*, and do not constitute reasonable limits that can be demonstrably justified in a free and democratic society.

B. Chronology of Key Events Leading up to the invocation of the *Emergencies Act*

i) Ottawa Protests: Before the Emergency Proclamation

10. On January 28, 2022, the “Freedom Convoy 2022” (“Convoy”) arrived in Ottawa. The Convoy was comprised of people from across Canada who intended to protest Canada’s public health response to the COVID-19 pandemic and the new vaccination requirements for cross-border truckers.¹ The Convoy’s arrival in Ottawa was not a surprise. Its route to Ottawa was widely publicized.²

11. Over the ensuing days, the protests in Ottawa grew. The blocking of public roadways by protestors violated both the *Criminal Code* and the *Highway Traffic Act*, RSO 1990 c H.8. Mischief under section 430 of the *Criminal Code*, for example, makes it a criminal offence for someone to obstruct, interrupt or interfere with the lawful use, enjoyment, or operation of property.

12. On January 31, 2022, Prime Minister Trudeau spoke with Ottawa Mayor Jim Watson about the Convoy and its illegal occupation of the downtown core.

13. By February 5, 2022, the Royal Canadian Mounted Police (“RCMP”) had provided “fresh reinforcements” to the Ottawa Police Service (“OPS”) at its request, in the form of 257 officers, from its detachment in Ottawa.³ The RCMP National Headquarters is also located in Ottawa.

14. The next day, on February 6, 2022, the City of Ottawa declared a state of emergency. Ontario Premier Doug Ford told the press that the provincial government was supporting Ottawa in whatever way it could, but that Ottawa had not asked the province to request military aid from the federal government.⁴

¹ Exhibit A, Affidavit of Madeleine Ross.

² Exhibit B, Affidavit of Madeleine Ross.

³ Exhibit C, Affidavit of Madeleine Ross.

⁴ Exhibit D, Affidavit of Madeleine Ross.

15. On February 7, 2022, the first of several trilateral meetings took place between the federal government, Mayor Watson, and the Ottawa Police Chief.⁵ Mayor Watson also wrote to the federal government asking for an additional 1800 RCMP and Ontario Provincial Police (“OPP”) officers.⁶

16. On February 12, 2022, the OPS announced the establishment of an enhanced “Integrated Command Centre” (ICC) that brought together the OPS, OPP and RCMP in response to the protests in Ottawa, “to coordinate enforcement” and “to make the most effective use of the additional resources our policing partners have provided us”, which “will result in a significantly enhanced ability of our police service to respond to the current situation in our city.”⁷

17. On February 15, 2022, Justice McWatt of the Ontario Superior Court of Justice issued an interlocutory injunction pursuant to s. 440 of the *Municipal Act*, RSO 1990, c M.45, in response to an application brought by the City of Ottawa, enjoining individuals from breaching the following By-laws of the City of Ottawa: Open Air Fire By-law 2004-163, Fireworks By-law 2003-237, Noise By-law 2017-255, Use and Care of Roads By-law 2003-498, and the Idling Control By-law 2007-266.⁸

18. Following the establishment of the ICC, and with the help of the additional resources provided by the OPP and the RCMP, the OPS began charging protestors. The charges include:

- (a) Tyson Billings: charged under the *Criminal Code* with mischief (section 430), counselling to commit the offence of mischief (section 464), counselling to commit the offence of disobey court order (section 464), obstruct police (section 129) and counselling to commit the offence of obstruct police (section 464).⁹
- (b) Patrick King: charged under the *Criminal Code* with mischief (section 430), counselling to commit the offence of mischief (section 464), counselling to commit the offence of disobey court order (section 464) and counselling to commit the offence of obstruct police (section 464).¹⁰
- (c) Tamara Lich: charged under the *Criminal Code* with counselling to commit the offence of mischief (section 464).¹¹

⁵ Exhibit E, Affidavit of Madeleine Ross.

⁶ Exhibit F, Affidavit of Madeleine Ross.

⁷ Exhibit H, Affidavit of Madeleine Ross.

⁸ Exhibit Z, Affidavit of Madeleine Ross.

⁹ Exhibit G, Affidavit of Madeleine Ross.

¹⁰ Exhibit I, Affidavit of Madeleine Ross.

¹¹ Exhibit J, Affidavit of Madeleine Ross.

(d) John Barber: charged under the *Criminal Code* with counselling to commit the offence of mischief (section 464), counselling to commit the offence of disobey court order (section 464) and counselling to commit the offence of obstruct police (section 464).¹²

19. As of February 21, 2022, Ottawa police had arrested and charged 196 people pursuant to offences under the *Criminal Code* and had towed 115 trucks.¹³ It is unclear whether even a single protester in Ottawa was charged with any offences created by the *Emergency Measures*.

ii) *Blockade of the Ambassador Bridge in Windsor, Ontario*

20. On February 7, 2022, protestors began a blockade at the Ambassador Bridge in Windsor. The bridge is Canada's busiest border crossing with the United States. Windsor Police responded immediately with a large police presence to monitor the demonstrations.

21. The next day, on February 8, 2022, Windsor Police issued a press release warning protesters that those "found committing crimes and acts of violence will be investigated and charges will be laid" and that steps taken would include "enforcement of traffic related offences and investigating any criminal acts."¹⁴

22. Two days later, the Windsor Police issued a press release explicitly outlining the various criminal offences that the protestors were potentially committing:

The Windsor Police Service wants to make demonstrators clearly aware that it is a criminal offence to obstruct, interrupt or interfere with the lawful use, enjoyment, or operation of property. The offence itself is known as mischief to property. The unlawful act of blocking streets at and near the Ambassador Bridge is resulting in people being denied the lawful use, enjoyment and operation of their property and causing businesses to close down. We are providing notice that anyone blocking streets or assisting others in the blocking of streets may be committing a criminal offence and must immediately cease further unlawful activity or you may face charges. You could be arrested if you are a party to the offence or assisting others in the direct or indirect commission of this offence. Vehicles or other property related to an offence may be seized. Once a vehicle is seized, it may be detained and, following a conviction, possibly forfeited.¹⁵

23. On February 10, 2022, Prime Minister Trudeau spoke with the Mayor of the City of Windsor and had another call with the Premier of Ontario Doug Ford. It is unclear what if any

¹² Exhibit K, Affidavit of Madeleine Ross.

¹³ Exhibit L, Affidavit of Madeleine Ross.

¹⁴ Exhibit M, Affidavit of Madeleine Ross.

¹⁵ Exhibit N, Affidavit of Madeleine Ross.

assistance Windsor sought from the federal government, and what the federal government's response was. That same day, auto industry groups with the support of the City of Windsor sought an injunction from the Ontario Superior Court of Justice to end the blockade.

24. On February 11, 2022, Chief Justice Morawetz granted the injunction, and ordered that the "Police or designated agents shall have authorization to remove any vehicles, personal property, equipment, structures, or other objects that impede or block access to the Ambassador Bridge and approaching roadways."¹⁶

25. By February 13, 2022, without any resort to the *Emergencies Act*, the Ambassador Bridge was fully reopened.

26. According to the Windsor Police, from February 7 to 13, 2022, 90 people were arrested and charged. The charges were laid under existing *Criminal Code* offences and included: 43 people charged with breaching a court order (section 127); 43 people charged with mischief over \$5,000 (section 430); one person charged with obstructing justice (section 139); one person charged with failing to attend court (section 145); and one person charged with dangerous driving (section 320.13). One person is facing a *Highway Traffic Act* charge for failing to remain (section 200(1)(a)).¹⁷

iii) *Blockade in Coutts, Alberta*

27. On January 29, 2022, a blockade began in Coutts, Alberta at the United States-Canada border. The Coutts protest was widely publicized. Alberta RCMP were aware of the planned blockade and had some time to plan their own response, which included having RCMP officers at the border for the duration of the blockade.¹⁸

28. On February 5, 2022, the Alberta Minister of Municipal Affairs, the Honourable Ric McIver, wrote a letter to the federal Minister of Public Safety, Marco Mendicino, and federal Minister of Emergency Preparedness, William Blair. Mr. McIver explained that Alberta's plan going forward was for the RCMP and partner law enforcement agencies to remove demonstrators and bystanders, which would allow for the removal of the vehicles and equipment obstructing the

¹⁶ Exhibit O, Affidavit of Madeleine Ross.

¹⁷ Exhibit FF, Affidavit of Madeleine Ross.

¹⁸ Exhibit P, Affidavit of Madeleine Ross.

highway. The only support that Mr. McIver sought from federal authorities was “provisions” in the form of equipment and personnel: “To support this approach, I am requesting federal assistance that includes the provision of equipment and personnel to move approximately 70 semi-tractor trailers and approximately 75 personal and recreational vehicles from the area.”¹⁹ It is unclear whether and how the federal government responded to Mr. McIver’s request.

29. On February 14, 2022, the Alberta RCMP executed search warrants and arrested several people involved in the Coutts protest. The arrests all appear to have taken place under the authority of the *Criminal Code* or provincial legislation. That day, the Alberta RCMP cleared the blockade and restored the border crossing.

iv) *Blockade at Sarnia Blue Water Bridge, Ontario*

30. On February 8, 2022, two groups of protests blocked the provincial highway leading to and from the Sarnia Blue Water Bridge, a border crossing. However, ten hours later, the OPP was able to clear the blockade and restore access to the border.

31. On February 9, 2022, a group created a highway blockade approximately 30 kilometres east of Sarnia on the provincial highway. Five days later, on February 14, 2022, the blockade was stopped and access to the highway was restored.

v) *Blockade at Emerson, Manitoba*

32. On February 10, 2022, protesters began blocking the Canada-United States border at the port of entry at Emerson, Manitoba. The next day, Manitoba Premier Heather Stefanson wrote to Prime Minister Trudeau seeking immediate and effective federal action regarding the blockade. Premier Stefanson did not specify what the federal action should look like, but she did welcome discussion on potential “federal-provincial collaborative action”.²⁰

33. By February 16, 2022, the blockade was completely cleared. In a press release, the RCMP explained that throughout the previous six days, officers used “open communication, and a measured approach to find a peaceful resolution to [the] situation” and said that because of these efforts, it had been able to coordinate and escort vehicles out of the area. The press release also

¹⁹ Exhibit Q, Affidavit of Madeleine Ross.

²⁰ Exhibit S, Affidavit of Madeleine Ross.

noted that in successfully clearing the blockade, the Manitoba RCMP worked collaboratively with the CBSA, US Customs and Border Protection, and Manitoba Transportation and Infrastructure.²¹

vi) *Blockade at the Peace Bridge at Fort Erie, Ontario*

34. On February 12, 2022, a protest targeted the Peace Bridge port entry at Fort Erie, Ontario. The protest disrupted inbound traffic at the border for part of that day, and then outbound traffic until February 14, 2022, by which date the Niagara Police cleared the blockade and restored access to the border.²²

vii) *Blockade in Surrey, British Columbia*

35. On February 12, 2022, several vehicles broke through an RCMP barricade in Surrey, British Columbia on their way to the Pacific Highway port of entry. Protesters forced the highway to close at the Canada-United States border in Surrey. On February 13, 2022, the Surrey RCMP arrested four protesters for “mischief”.²³ By February 19, 2022, the border had reopened.²⁴

viii) *Ontario Measures in Response to the Protests and Blockades*

36. On February 11, 2022, the Province of Ontario declared a state of emergency pursuant to O.Reg. 69/22 under the *Emergency Management and Civil Protection Act*, RSO 1990, c E9.²⁵ At a press conference, Premier Ford said that he would convene cabinet and “urgently enact orders that will make crystal clear it is illegal and punishable to block and impede the movement of goods, people and services along critical infrastructure.”²⁶ On February 12, 2022, the Ontario government confirmed the state of emergency (O. Reg. 70/22)²⁷ and promulgated O.Reg. 71/22, making it illegal and punishable to block and impede the movement of goods, people and services along critical infrastructure.²⁸

²¹ Exhibit R, Affidavit of Madeleine Ross.

²² Exhibit A at p. 8, Affidavit of Madeleine Ross.

²³ Exhibit T, Affidavit of Madeleine Ross.

²⁴ Exhibit U, Affidavit of Madeleine Ross.

²⁵ Exhibit AA, Affidavit of Madeleine Ross.

²⁶ Exhibit V, Affidavit of Madeleine Ross.

²⁷ Exhibit DD, Affidavit of Madeleine Ross.

²⁸ Exhibit EE, Affidavit of Madeleine Ross.

37. On February 20, 2022, the Province of Ontario brought an application in the Superior Court of Justice for an order pursuant to section 490.8 of the *Criminal Code*. The Court issued the order, which prohibited people from disposing, or otherwise dealing with, donations made through the Freedom Convoy and Adopt-a-Trucker campaign pages on the “GiveSendGo” online fundraising platform.²⁹

ix) *Nova Scotia Measures in Response to the Blockades*

38. On January 28, 2022, the Nova Scotia Minister of Municipal Affairs and Housing issued Direction 22-003 (road blockade ban) pursuant to section 14 of the *Emergency Management Act*, SNS 1990, c 8, prohibiting protests from blockading a highway near the Nova Scotia-New Brunswick border. Failure to comply with the Direction could result in a summary conviction with fines between \$3000 and \$10 000 for individuals.³⁰

39. On February 4, 2022, the Nova Scotia Attorney General and Minister of Justice promulgated N.S. Reg. 16/2022, pursuant to section 8 of the *Summary Proceedings Act*, RNS, c 450, to make the prohibitions in Direction 22-003 (road blockade ban) summary conviction offences.³¹

x) *The Deputy Director of FINTRAC Testifies at the House of Commons Regarding the Protests and Blockades*

40. On February 10, 2022, Barry McKillop, the Deputy Director of Intelligence of the Financial Transactions and Reports Analysis Centre (“FINTRAC”), testified at the House of Commons Public Safety and National Security Committee about the protests taking place across the country, and the concerns about how these protests were being funded.

41. Mr. McKillop explained that while crowdfunding sites are not a regulated money service business (“MSB”) under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17, when those sites transact with or through businesses that are MSBs, e.g., payment processing platforms such as Stripe or PayPal, those MSBs would be able to submit reports identifying transactions that are suspicious and would submit such reports to FINTRAC.³² Mr.

²⁹Exhibit W, Affidavit of Madeleine Ross. See also Exhibit GG, Affidavit of Madeleine Ross.

³⁰ Exhibit BB, Affidavit of Madeleine Ross.

³¹ Exhibit CC, Affidavit of Madeleine Ross.

³² Exhibit X, Affidavit of Madeleine Ross, at 13:43:18 to 13:43:50.

McKillop testified that to date, FINTRAC had not seen a spike in suspicious transaction reporting in relation to the Ottawa protests.³³

C. The History of the *Emergencies Act*

42. The exercise of emergency powers by the federal cabinet has been deeply troubled throughout Canada's history. The *War Measures Act* was the direct predecessor to the *Emergencies Act* and was in force between 1914 and 1988.³⁴ During that time, Canada spent close to two decades under federal emergency legislation.

43. Professor Patricia Peppin of Queen's University's Faculty of Law describes that the *War Measures Act* "superseded all existing laws, provided overarching powers for cabinet to govern through regulation, and permitted overriding the normal operation of the federal system." Ultimately, the act was used to support censorship and to permit internment:

The *War Measures Act* was used to impose censorship, to outlaw socially unacceptable organizations, to legalize retroactively the actions taken by the military during the Quebec City conscription riots, to impose preventive detention, to allow the deportation of Canadian-born people of Japanese ancestry, to permit the internment of thousands of Japanese Canadians, to authorize the confiscation of Japanese Canadians' property under the guise of expropriation for compensation, the registration and internment of alien enemies in both World Wars, and the detention of persons who belonged to 'unlawful associations' like the Communist Party.³⁵

44. The *Emergencies Act* was drafted to ensure these abuses never happened again by protecting parliamentary democracy, federalism, and individual rights. The overarching principle behind the specific provisions of the *Emergencies Act* is proportionality. Every provision of the Act is designed with the intent of limiting the federal cabinet's power to declare an emergency to only those situations where it is absolutely necessary, to grant to the cabinet only the powers it needs to deal with the particular emergency, and for the powers to exist for only as long as the emergency exists.

³³ Exhibit X, Affidavit of Madeleine Ross, at 13:54:00 to 13:54:36.

³⁴ The *War Measures Act* was in fact a series of statutes – the *War Measures Act, 1914*, SC 1915; *War Measures Act*, R.S.C. 1927, c 206; *National Emergency Transitional Powers Act, 1945*, SC 1945; *National Emergency Transitional Powers Act, 1945*, SC 1945; *Emergency Powers Act, 1951*, c 5 and SC 1952-53, c 33; *War Measures Act, RSC 1970*, c W-2; and the *Public Order (Temporary Measures) Act 1970*, SC 1970-72, c 2.

³⁵ Exhibit Y, Affidavit of Madeleine Ross.

45. The Act defines a “national emergency” as “an urgent and critical situation of a temporary nature that”:

- (a) seriously endangers the lives, health or safety of Canadians and is of such proportions or nature as to exceed the capacity or authority of a province to deal with it; or
- (b) seriously threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada”; and
- (c) “cannot be effectively dealt with under any other law of Canada”.

46. The Act creates four different kinds of national emergencies: public welfare emergencies, public order emergencies, international emergencies, and war emergencies. Each type of emergency must satisfy additional conditions before the federal cabinet can proclaim it. Each type of emergency confers different powers on the federal cabinet.

47. In this case, federal cabinet has proclaimed a public order emergency. A public order emergency is “an emergency that arises from threats to the security of Canada and that is so serious as to be a national emergency” (section 16). “Threats to the security of Canada”, in turn, are defined by the *Canadian Security Intelligence Security Act*, RSC 1985, c C-23, section 2 as:

- (a) espionage or sabotage that is against Canada or is detrimental to the interests of Canada or activities directed toward or in support of such espionage or sabotage;
- (b) foreign influenced activities within or relating to Canada that are detrimental to the interests of Canada and are clandestine or deceptive or involve a threat to any person,
- (c) activities within or relating to Canada directed toward or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political, religious or ideological objective within Canada or a foreign state, and
- (d) activities directed toward undermining by covert unlawful acts or directed toward or intended ultimately to lead to the destruction or overthrow by violence of, the constitutionally established system of government in Canada.

48. The federal cabinet may declare a public order emergency if it “believes, on reasonable grounds, that a public order emergency exists and necessitates the taking of special temporary measures for dealing with the emergency” (section 17).

49. When a declaration of public order emergency is in effect, the federal cabinet may make “orders or regulations” on the following matters if it “believes, on reasonable grounds” that such measures “are necessary for dealing with the emergency” (section 19(1)):

- (a) the regulation or prohibition of:

- (i) any public assembly that may reasonably be expected to lead to a breach of the peace,
- (ii) travel to, from or within any specified area, or
- (iii) the use of specified property;
- (b) the designation and securing of protected places;
- (c) the assumption of the control, and the restoration and maintenance, of public utilities and services;
- (d) the authorization of or direction to any person, or any person of a class of persons, to render essential services of a type that that person, or a person of that class, is competent to provide and the provision of reasonable compensation in respect of services so rendered; and
- (e) the imposition:
 - (i) on summary conviction, of a fine not exceeding five hundred dollars or imprisonment not exceeding six months or both that fine and imprisonment, or
 - (ii) on indictment, of a fine not exceeding five thousand dollars or imprisonment not exceeding five years or both that fine and imprisonment,
 for contravention of any order or regulation made under this section.

D. The *Emergency Proclamation*, *Emergency Measures*, and *Economic Measures*

50. The federal government issued the *Emergency Proclamation* on February 14, 2022. The Proclamation declared that a public order emergency exists “throughout Canada” and “necessitates” the taking of special temporary measures for dealing with the emergency.

51. The *Emergency Proclamation* describes the “emergency” as consisting of five elements:

- (a) the continuing blockades by both persons and motor vehicles that is occurring at various locations throughout Canada and the continuing threats to oppose measures to remove the blockades, including by force, which blockades are being carried on in conjunction with activities that are directed toward or in support of the threat or use of acts of serious violence against persons or property, including critical infrastructure, for the purpose of achieving a political or ideological objective within Canada;
- (b) the adverse effects on the Canadian economy — recovering from the impact of the pandemic known as the coronavirus disease 2019 (COVID-19) — and threats to its economic security resulting from the impacts of blockades of critical infrastructure, including trade corridors and international border crossings;
- (c) the adverse effects resulting from the impacts of the blockades on Canada’s relationship with its trading partners, including the United States, that are detrimental to the interests of Canada;

- (d) the breakdown in the distribution chain and availability of essential goods, services and resources caused by the existing blockades and the risk that this breakdown will continue as blockades continue and increase in number; and
- (e) the potential for an increase in the level of unrest and violence that would further threaten the safety and security of Canadians.

52. The *Emergency Proclamation* goes on to describe the special temporary measures as consisting of:

- (a) measures to regulate or prohibit any public assembly — other than lawful advocacy, protest or dissent — that may reasonably be expected to lead to a breach of the peace, or the travel to, from or within any specified area, to regulate or prohibit the use of specified property, including goods to be used with respect to a blockade, and to designate and secure protected places, including critical infrastructure;
- (b) measures to authorize or direct any person to render essential services of a type that the person is competent to provide, including services related to removal, towing and storage of any vehicle, equipment, structure or other object that is part of a blockade anywhere in Canada, to relieve the impacts of the blockades on Canada's public and economic safety, including measures to identify those essential services and the persons competent to render them and the provision of reasonable compensation in respect of services so rendered;
- (c) measures to authorize or direct any person to render essential services to relieve the impacts of the blockade, including to regulate or prohibit the use of property to fund or support the blockade, to require any crowdfunding platform and payment processor to report certain transactions to the Financial Transactions and Reports Analysis Centre of Canada and to require any financial service provider to determine whether they have in their possession or control property that belongs to a person who participates in the blockade;
- (d) measures to authorize the Royal Canadian Mounted Police to enforce municipal and provincial laws by means of incorporation by reference;
- (e) the imposition of fines or imprisonment for contravention of any order or regulation made under section 19 of the *Emergencies Act*; and
- (f) other temporary measures authorized under section 19 of the *Emergencies Act* that are not yet known.

53. The House of Commons confirmed the *Emergency Proclamation* on February 21, 2022.

54. The *Emergency Measures* and the *Economic Measures* were promulgated on February 15, 2022. Together, they set out the prohibitions and powers created by the invocation of the *Emergencies Act*.

55. The *Emergency Measures* creates four prohibitions:

- (a) A person must not participate in a public assembly that may reasonably lead to a breach of peace or causing a person under the age of 18 to participate in such an assembly, by the serious disruption of the movement of persons or goods or the serious interference with trade the interference with the functioning of critical infrastructure, or the support of the threat or use of acts of serious violence against persons or property (section 2);
- (b) A foreign national must not enter Canada with the intent to participate in or facilitate such an assembly (section 3);
- (c) A person must not travel to or within an area where such an assembly is taking place, or causing a person under the age of 18 to travel to, or within 500 metres of such an assembly (section 4); and
- (d) A person must not, directly or indirectly, use collect, provide, make available or invite a person to provide property to facilitate or participate in such an assembly, or for the purpose of benefiting any person who is facilitating or participating in such an assembly (sections 5).

56. The *Emergency Measures* also direct people, in exchange for fair compensation, to assist the Minister of Public Safety and Emergency Preparedness, the Commissioner of the RCMP, or anyone acting on their behalf, with removing, towing and storing any objects that are part of a blockade (sections 7, 8 and 9).

57. A failure to comply with the *Emergency Measures* allows for prosecution on summary conviction or by indictment. Summary prosecution carries a possible punishment of a fine not exceeding \$5,000 or imprisonment not exceeding 6 months. Prosecution by indictment carries a possible punishment of a fine not exceeding \$5000 or a term of imprisonment not exceeding 5 years (section 10(2)).

58. The *Economic Measures* require financial “entities” listed therein (section 3) to cease dealing in any property that is owned, held or controlled, directly or indirectly, by a designated person or by a person acting on behalf of or at the direction of a “designated person”; cease facilitating any related transactions; cease making available property (including funds or virtual currency); and cease providing any financial or related services to or for the benefit of a designated person (section 2). A designated person is someone who is engaged, directly or indirectly, in an activity prohibited by sections 2 to 5 of the *Emergency Measures* (section 1).

59. The *Economic Measures* also require entities to determine on a continuing basis whether they are in possession or control of property that is owned, held or controlled by or on behalf of a

“designated person” (section 3). Entities are required to register with FINTRAC and to report every suspicious financial transaction (section 4), and to disclose to the Commissioner of the RCMP the existence of property in their possession or control that they have “reason to believe” is owned, held or controlled by or on behalf of a designated person and any information about a transaction or proposed transaction in relation to this property (section 5). The *Economic Measures* offer no guidance on how the entities should interpret the phrase “reason to believe”. They immunize the entities from civil liability when complying with the *Economic Measures*.

60. The *Emergency Proclamation* was revoked on February 23, 2022 by the *Proclamation Revoking the Declaration of a Public Order Emergency*, SOR/2022-26. Pursuant to s. 26(2) of the *Emergencies Act*, the *Emergency Measures* and *Economic Measures* expired as a direct consequence of the revocation, also on February 23, 2022.

E. The *Emergency Proclamation*, *Emergencies Measures*, and *Economic Measures* are unlawful

61. The *Emergency Proclamation* and *Emergencies Measures* are unlawful because they do not meet the key requirement of necessity in the *Emergencies Act*. It simply cannot be established that the situation that the invocation of the *Emergencies Act* was intended to address could not have been handled effectively under existing Canadian law.

62. One of the key justifications for invoking the *Emergencies Act* was the impact that border blockades were having on international trade and international relations. But in reality, the border blockades at the Ambassador Bridge, Coutts, Emerson, the Peace Bridge, Sarnia, and Surrey were cleared by police using existing provisions under the *Criminal Code* and provincial laws, including *Highway Traffic Act* legislation. The blockades were all effectively resolved without recourse to the powers granted by the *Emergencies Measures*, and there are currently no border blockades.

63. In clearing the border blockades, every single charge the police have laid thus far has been under the *Criminal Code* and existing provincial legislation, and not a single charge has been laid using the allegedly indispensable new offences created under the *Emergencies Act*.

64. Future border blockades can be effectively addressed in the same way, through the use of existing legislation and the exercise of existing federal and provincial authority. Recourse to the extraordinary powers granted by the *Emergencies Measures* is simply not necessary.

65. Similarly, to address the protests in Ottawa, the federal government already had the power to provide officers to the Ottawa Police Service and to establish a joint command with the OPS and OPP in Ottawa, and it in fact did exercise these powers prior to the *Emergency Proclamation*. In addition, section 129(b) of the *Criminal Code* makes it an offence for a person, without reasonable excuse, to refuse to assist a police officer in the execution of their duty. This could apply to tow truck drivers who refuse to assist police by making their vehicles available as needed to preserve the peace.

66. Again, the efficacy of existing legislation and authority in addressing the protests in Ottawa is made clear by the fact that every single charge that was laid when the police moved in to end the blockades was laid under existing *Criminal Code* provisions. Not a single charge has been laid pursuant to the *Emergency Measures*.

67. The federal and provincial government also already had the ability to take steps to limit the financing of future illegal protests. The existing authority of FINTRAC over payment processing platforms already requires these platforms to report suspicious transfers to and from crowdfunding sites. In addition, the Attorney General already has the power to make an application for a restraint order under section 490.8 of the *Criminal Code*, which would prevent a person from disposing of, or otherwise dealing with, any interest in offence-related property.

68. When Parliament passed the *Emergencies Act* in 1988, it did so in full recognition of this country's dark history of abuse under the *War Measures Act*. It specifically sought to make sure the *Emergencies Act* would not be used unless it was absolutely necessary, and it stipulated that the powers under the *Emergencies Act* should never be invoked unless existing law was truly incapable of dealing with the problem. There is simply no evidence that this standard was met in this case. In fact, the way in which the protests were actually dealt with and resolved gives us every reason to believe that resort to the *Emergencies Act* was unnecessary.

F. The *Emergency Proclamation*, *Emergencies Measures*, and *Economic Measures* Violate the *Charter*

69. One of the reasons why emergency powers ought to be invoked only in extraordinarily rare circumstances is that emergency powers often lead to abuses of individual rights. Canada's history under the *War Measures Act* provides ample evidence of that. In this case, the reasonableness of

the Government's invocation of the *Emergencies Act* must take into account whether the *Emergency Measures* and the *Economic Measures* violate the *Charter*. Both sets of measures create serious violations of core democratic rights and other freedoms, under sections 2, 7, and 8 of the *Charter*.

i) *Section 2 of the Charter*

70. Sections 2, 4 and 5 of the *Emergency Measures*, and section 2 of the *Economic Measures*, all violate the core democratic rights to freedom of expression, association, and assembly guaranteed by sections 2(b), (c), and (d) of the *Charter*.

71. The rights to expression, assembly, and association created by section 2 of the *Charter* have been interpreted purposively, in the broadest possible terms. The *Emergency Measures*' prohibitions on attending assemblies and engaging in fundraising — as either a donor or a solicitor of donations — amount to clear cut violations of these rights. Similarly, section 2 of the *Economic Measures* is designed to discourage and prevent participation in these constitutionally protected activities, which also amounts to a violation of these rights. It will therefore fall to the government to justify these violations under section 1 of the *Charter*.

72. Under section 1, these prohibitions will fail because they are not minimally impairing, and their deleterious effects outweigh their salutary benefits. Section 2 of the *Emergency Measures* criminalizes participation in a demonstration that *might* — in the future — “reasonably be expected to lead to a breach of the peace.” The *Emergency Measures* provide no guidance on how to determine whether a breach of the peace can be “reasonably expected.”

73. It is clear that these measures have been invoked in response to protests against government measures taken in response to the COVID-19 pandemic — and in particular the use of illegal blockades during these protests. Going forward, however, it is entirely unclear how the government will enforce the *Emergency Measures* and *Economic Measures*, and what evidence or intelligence will be used to satisfy a reasonable belief that a breach of the peace might occur. For example, if protests were organized in response to the government's invocation of the *Emergencies Act*, would it be possible for the government and the police to conclude there is a reasonable expectation that a breach of the peace might occur at these protests, given what has just taken place in the previous protests? Reasoning along these lines is not far-fetched, and it risks chilling

legitimate speech and demonstration by instilling fear in those who might otherwise wish to participate in lawful demonstrations against government actions.

74. It also seems clear from the wording of the *Emergency Measures* that someone could be charged and convicted of an offence under this section for participating in a demonstration that never actually resulted in a breach of the peace. This is because the provision does not merely criminalize or prohibit participation in a demonstration where a breach of the peace actually occurs, . Rather, it targets situations where it is reasonably believed such a breach might occur.

75. Similarly, the section draws no distinction between those protestors who actually participate in a breach of the peace, and those who do not. The only intent required by the prohibition is an intention to participate in the public assembly as a whole — and not the actual breach of the peace that *might* possibly occur. In other words, if someone attends a public demonstration with the sole intention of standing on the front lawn of Parliament holding up a sign expressing their opinion, they would be guilty of a criminal offence if other protestors decided to block the roads in a way that offended the prohibition. Similarly, they would be guilty of an offence if it could simply be reasonably expected that an event might occur, even if it does not actually occur, and even if they had no intention of participating in such an event did it occur.

76. This prohibition is not minimally impairing because it goes further than necessary. Instead of targeting actually unlawful conduct that constitutes a breach of the peace, it prohibits any participation — even peaceful participation — in a protest where state officials “reasonably believe” a breach of the peace might occur.

77. Sections 4 and 5 of the *Emergency Measures*, and section 2 of the *Economic Measures*, rely on the same definition of unlawful assembly, and similarly fail to minimally impair *Charter* rights as a result.

ii) *Section 7 of the Charter*

78. Sections 2, 4 and 5 of the *Emergency Measures* violate section 7 of the *Charter*. These prohibitions are deprivations of the right to liberty because they carry with them the threat of significant jail sentences. These deprivations are not in accordance with the principles of fundamental justice, because they are overbroad and/or have effects that are grossly disproportionate to the objectives of the prohibition.

iii) *Section 8 of the Charter*

79. Sections 4 and 5 of the *Economic Measures* violate section 8 of the *Charter*. Section 4 requires financial institutions to register with FINTRAC if they are in possession of property that is owned by or held on behalf of a person who has participated in an unlawful assembly (i.e. a “designated person” under the *Economic Measures*) and to report to FINTRAC if they have reasonable grounds to suspect that a transaction has been conducted relating to the commission of a money laundering or terrorism related offence. Section 5 requires financial institutions to report to the RCMP and to CSIS “the existence of property in their possession or control” that they have reason to believe is owned, held or controlled by or on behalf of a person who is participating in an unlawful assembly.

80. Canadian citizens and permanent residents enjoy a reasonable expectation of privacy over the information that banks hold about them, including the details of the accounts that they hold, the funds they possess, and the ways they spend their money. By requiring financial institutions to provide such information to CSIS and to the RCMP, these provisions of the *Economic Measures* constitute a search.

81. These search provisions violate section 8 of the *Charter* because they do not comply with the Supreme Court’s decision in *Hunter v. Southam*, [1984] 2 SCR 145. *Hunter v. Southam* held that for a statutory provision authorizing a search to be reasonable under the *Charter*, it must require prior judicial authorization based on reasonable grounds. Sections 4 and 5 of the *Economic Measures* do not make any provision for prior judicial authorization before the search takes place, nor do they define the standard upon which a financial institution must satisfy itself that it is dealing with a “designated person” before turning that person’s financial information over to CSIS and the RCMP.

G. The Canadian Constitution Foundation Meets the Test for Public Interest Standing

82. The Canadian Constitution Foundation (CCF) brings this application on the basis of public interest standing. The federal government’s invocation of the *Emergencies Act* has a serious effect on the constitutional rights and freedoms of Canadians across the country.

83. Founded in 2002, the CCF is an independent, national, and non-partisan registered charity whose mission is to protect constitutional freedoms. The CCF furthers this mission through education, communication, and litigation.

84. In keeping with its mandate, the CCF has accumulated significant public interest litigation experience. The CCF has appeared before all levels of court in Ontario and Canada and has made significant contributions to constitutional law jurisprudence. The CCF has been granted intervener status by the Supreme Court of Canada in 13 cases.

85. The CCF has also been granted standing to litigate issues in its own right as a public interest litigant. Just last year, the CCF was the applicant on a successful constitutional challenge to various provisions of the *Elections Act*, in *Canadian Constitution Foundation v. Canada (Attorney General)*, 2021 ONSC 1224.

86. The CCF has a genuine interest in this Application because it is directly connected to the organization's protective mandate. The CCF also has the experience and expertise needed to efficiently and effectively conduct the litigation surrounding this judicial review. The CCF has started similar actions before, knows what will be involved, and has the resources to pursue this Application.

87. The invocation of the *Emergencies Act* and its impact on the constitutional rights of all Canadians creates an urgent need for this Application and a consideration of the legality of the underlying decision. The CCF will use its expertise and experience to ensure the issues are raised and resolved through expeditious proceedings.

THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL

70. Affidavit of Joanna Baron dated February 22, 2022;

71. Affidavit of Madeleine Ross dated February 22, 2022;

72. Such further and additional materials as the Applicant may advise and this Honourable Court may allow.

Amended Rule 317 Request: The Applicant requests that the Respondent send certified copies of the following materials that are not in the possession of the Applicant, but are in the possession of the Respondent, to the Applicant and the Registry:

1. The record of materials before the Governor in Council in respect of the *Emergency Proclamation*.
2. The record of materials before the Governor in Council in respect of the *Emergency Measures*.
3. The record of materials before the Governor in Council in respect of the *Economic Measures*.
4. The Record of materials before the Governor in Council in respect of the *Proclamation Revoking the Declaration of a Public Order Emergency*.

~~February 22, 2022~~ March 18, 2022



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FEDERAL COURT

B E T W E E N :

CANADIAN CONSTITUTION FOUNDATION

Applicants

- and -

ATTORNEY GENERAL OF CANADA

Respondent

AFFIDAVIT OF MADELEINE ROSS

I, **Madeleine Ross**, of the City of Toronto, in the Province of Ontario, hereby MAKE OATH AND SAY:

1. I am an associate at Goddard & Shanmuganathan LLP where Janani Shanmuganathan is a partner. Ms. Shanmuganathan, along with Sujit Choudhry, represent the Canadian Constitution Foundation (“the CCF”) in this Application for Judicial Review. In that capacity, I have come to know the following details about this proceeding.
2. I am informed by Ms. Shanmuganathan that the following documents are relevant to the Application for Judicial Review in this matter, and they are attached as exhibits.
3. A copy of a transcript of Prime Minister Trudeau’s remarks during a press conference on February 21, 2022 is attached and marked as **Exhibit A**.
4. A copy of a transcript of Prime Minister Trudeau’s remarks during a press conference on February 23, 2022 is attached and marked as **Exhibit B**.

5. A copy of an Ottawa Police Service press release dated February 27, 2022 regarding Steeve Charland is attached and marked as **Exhibit C**.

6. I make this affidavit in support of the Application for Judicial Review and for no other or improper purpose.

AFFIRMED remotely by Madeleine Ross
stated as being located at the City of Toronto
in the Province of Ontario on the 28th
day of February, 2022 in accordance with
O. Reg 431/20, Administering Oath or
Declaration Remotely

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MADELEINE ROSS



A Commissioner, etc.

This is **EXHIBIT “A”**

to the Affidavit of

MADELEINE ROSS

sworn before me by video conference

this 28th day of February, 2022.

A handwritten signature in cursive script, reading "Janani S", positioned above a horizontal line.

Janani Shanmuganathan

Speaker 1: [French 00:00:02] Hi, everyone. [French 00:00:04]. Today, we have with us, the Prime Minister, the very... [French 00:00:18] Justin Trudeau [French 00:00:18] Chrystia Freeland. We have the President of the Queen's Privy Council for Canada and Minister of the Emergency Preparedness, Bill Blair. The Minister of Public Safety, Marco Mendicino, and the Minister of Justice and Attorney General of Canada, [00:00:30] David Lametti. Prime Minister Trudeau will make a few remarks, and then, we will turn to questions. A reminder, it is 20 minutes of questions, 10 in the room and 10 on Zoom. [French 00:00:40]

Justin Trudeau: [French 00:00:42]. Hello, everyone. [French 00:00:45]. These past weeks have been incredibly difficult for the people of our capital city, and they've been stressful and disturbing for all Canadians. [00:01:00] The situation is not anything anyone wanted, and quite frankly, not anything we'd want to see again. [French 00:01:09]. I [00:01:30] want to take a moment to thank the law enforcement agencies from across the country who joined the operations, and I want to continue to thank them as they ensure that, among other things, Canada's border crossings remain open including in Windsor, and that all communities are safe.

We didn't want to use the Emergencies Act. It's never something to turn to without serious [00:02:00] consideration. But after weeks of dangerous and unlawful activities, after weeks of people being harassed in their neighborhoods and small businesses forced to close, after billions of dollars were stalled in trade putting people's jobs and livelihoods at risk, after the National War Memorial was desecrated, after evidence of increased ideologically-motivated violent extremism activity across [00:02:30] the country, after a flood of misinformation and disinformation washed over Canada including from foreign sources, after these illegal blockades and occupations received disturbing amounts of foreign funding to destabilize Canada's democracy, it became clear that local and provincial authorities needed more tools to restore order and keep people [00:03:00] safe.

For the past few days, parliamentarians have been debating the Emergencies Act and will be voting on it tonight. I ask all members of parliament to take action against illegal blockades and to stand up for public safety and for the freedom of Canadians. Invoking the Emergencies Act has been necessary. Law enforcement agencies relied on it to set up secured areas [00:03:30] in downtown Ottawa and at border crossings. It prevented foreign money from continuing to fund illegal blockades, and it's making sure our borders remain open. It has been the responsible thing to do.

We now have a choice to make as a society. We can choose to keep reliving these scenes that tear at the values that find us as Canadians, or we can choose to remember [00:04:00] who we are and the best vision of what Canada can be. What we've seen in these past weeks is not the story of this pandemic. The story of this pandemic is one of unity and solidarity. [French 00:04:16]. Through [00:05:00] this pain and heartbreak, Canadians answered the call because

Canadians are good people. We're among the world leaders in vaccination and health [00:05:30] outcomes, as well as in economic recovery and job creation. It took courage. It took resilience, but we did it together. And despite the many challenges that we faced, our democratic institutions remain strong.

We don't always agree, and that's okay. In fact, it's not only healthy to have debates in the democracy, it's [00:06:00] necessary. Our government will always defend freedom of expression and freedom of peaceful assembly. These values are at the core of our charter of rights and freedoms. They're at the core of who we are as Canadian. In a democracy, you can protest, you can share your opinion at the top of your lungs, you can disagree with elected officials, you can certainly disagree with me. [00:06:30] But you can't harass your fellow citizens who disagree with you. You can't hold a city hostage. You can't block a critical trade corridor and deprive people of their jobs. You can't attack journalists for reporting, which is essential to our democracy. What you can do is vote. What you can do is run for office. That's [00:07:00] how change happens in a democracy.

[French 00:07:07]. [00:07:30] More than ever, now is the time to work together. It's also the time to reflect on the kind of future we want for our country. There's a lesson for all of us [00:08:00] in what happened this month. We don't know when this pandemic is going to finally end, but that doesn't mean we can't start healing as a nation. And it starts with all of us.

If you spend a lot of time online, try looking outside your social media bubble every now and then. If you have a cousin who you haven't seen in a while because they're unvaccinated or [00:08:30] because they're vaccinated, give them a call. If a political conversation got heated during a recent gathering and a friend or relative left early, pick up the phone. Not to try to convince them, not to argue, but simply to ask how they're doing. Look, in the heat of the moment, we can all get carried away trying to [00:09:00] win an argument, but not every single conversation has to be about winning an argument. Sometimes, it's more important to just be there for one another.

As a country, let's aim for more decency in our public discourse, not less. Let's cherish the democracy that we have, and let's commit ourselves every day to working together, to make it even [00:09:30] better. Merci.

Speaker 1: [French 00:09:35]. So like I said, we will have 20 minutes of questions, starting with questions in the room. So, we have 10 minutes. I would ask you, Ministers and the Prime Minister, if you could keep your answers short. That would be greatly appreciated, because we have a lot of questions in the room and on Zoom. And for people on Zoom, if you could use the raise hand function to indicate that you have a question, that would be greatly appreciated. [French 00:09:56]. David Thurton, CBC.

David Thurton: Hi, Prime [00:10:00] Minister. Do we still need the Emergencies Act? The blockades have been cleared. Parliament Hill is being cleared. Do we still need it?

Justin Trudeau: As I said, the Emergencies Act is not something to undertake lightly, and it's something that needs to be momentary, temporary, and proportional. That's why every single day, I'm receiving briefings and we are reflecting on how much longer the Emergencies Act needs to be in place. [00:10:30] We don't want to keep it in place a single day longer than necessary, but even though the blockheads are lifted across border openings right now, even though things seem to be resolving very well in Ottawa, this state of emergency is not over. There continues to be real concerns about the coming days, but we will continue to evaluate every single day whether or not [00:11:00] it is time and we are able to lift this state of emergency. But I will turn to Ministers Mendicino and Blair, who on this question wanted to say a couple of words.

Marco Mendicino: Thank you very much, Prime Minister, and thank you for the question. Look, I think there's no doubt that we have seen significant progress here in Ottawa. And after three weeks of torment for local residents, for [00:11:30] small businesses, for you folks who have been reporting, the images have been shocking and at times been deeply concerning, this morning and yesterday, we saw calm, peace and quiet. I think that was certainly a sense of relief for all of us, but we know that there are still a number of individuals who are affiliated with the illegal blockades who were in the area just this morning. We saw that there's some reports for [00:12:00] a potential activity in the area, so we have to remain vigilant. And not only in Ottawa, but at our ports of entry.

A couple of days ago, there was an effort to try and block Surrey, an important trade corridor at the Pacific highway. We continue to watch very closely activities in Windsor, and we're following the advice of our law enforcement. I would just point out that we've had a number of individuals reach out, including the Canadian Association of Chiefs [00:12:30] of Police, the Ontario Association of Chiefs of Police, the Canadian Association of Police Members who are the rank and file, who have said to us with a very clear and singular voice that the Emergencies Act is a tool that is continuing to not only address the illegal occupation here in Ottawa, but also being used very effectively to prevent future blockades.

Now, I want to echo exactly what the Prime Minister said, which is I think a sentiment that we all share across government, and that is we do not want to use [00:13:00] the Emergencies Act for a single moment longer than is necessary. And I believe that when you survey the conduct of law enforcement over the last number of days, what you have seen is restraint. I mean, take a look at the way that the police carried themselves throughout the course of dealing with the illegal occupation here in Ottawa. There was a degree of professionalism and focus, despite the fact that there was an emotionally-charged atmosphere, despite the many provocations and intimidation,

[00:13:30] and, at times, efforts to assault officers. And despite all of that, we saw a minimum use of force. So, I think that kind of conduct will continue to carry through the Emergencies Act, but we won't use it for any longer that it's necessary.

Speaker 5: Ministers, we have 10 minutes only for questions, and we've used it all up on the first one. I just want to state an extra 10 would be great.

Marco Mendicino: Yup.

Bill Blair: [00:14:00] I'll take your point, David. I think, clearly, the police have used and the measures that we brought forward in the Emergencies Act appropriately and to significant effects. We're pleased with the progress that's being made. We're monitoring on a daily and even hourly basis, the threat environment with our senior officials and with law enforcement. And we are committed to ending this emergency at the earliest opportunity, but clearly we're not out of the emergency yet. And so, we'll continue [00:14:30] to monitor that very carefully. I hope that's satisfactory, David.

Speaker 7: [French 00:14:35].

Justin Trudeau: [French 00:14:47].

Annie Bergeron-...: [00:15:00] Hi, there. It's Annie Bergeron-Oliver for CTV National News. My question is for Minister Freeland, I believe. [00:15:30] Two conservative MP say that there are constituents who donated small amounts, about \$50 or so, have had their bank accounts frozen. I'm wondering if this is a case of a mistaken use of powers granted to banks under the Emergencies Act, or is the government going after any donor, including small donors?

Justin Trudeau: I'll turn to Minister Freeland in a second, but the measures of we put in place are designed and focused on ensuring that people in the current illegal occupations leave. [00:16:00] That has been the intent and the focus right now. If there are specific cases that conservative ministers can bring forward to highlight where that is not the case, we would happily look at them and hope to resolve them, but I'll turn over to Minister Freeland.

Chrystia Freela...: Thank you. Yeah, thanks for the question. First of all, just as the Prime Minister said, particularly [00:16:30] right now, at a time which is very fraught, it's important for all of us to be very, very careful, to get our facts exactly right in each circumstance. I would urge all of us to take that care in every situation. In terms of the financial measures, the RCMP has [00:17:00] given, to the financial institutions, names of leaders and organizers of the protests, and of people whose trucks were part of occupations and blockades. That is the only information, according to the RCMP, that the RCMP has given to financial institutions.

I think it's also really important for everyone to be clear, and this speaks [00:17:30] to the getting our facts straight point, that these measures applied only as of the 15th of February. That is when financial support of these illegal blockades and occupations began to be sanctioned.

And then finally, let me say, for anyone [00:18:00] who is concerned that their accounts may have been frozen because of their participation in these illegal blockades and occupation, the way to get your account unfrozen is to stop being part of the blockade and occupation. These measures were put in place to disrupt illegal activity in Canada. [00:18:30] We were very clear last Monday that we would be following the money, that we would be using financial tools to disrupt illegal blockades and occupations. The focus absolutely has been on leaders and on the vehicles that were such an important part of the illegal blockades and occupations. That has been the only focus of law enforcement. Thank you.

Speaker 10: [French 00:19:02].

Justin Trudeau: [French 00:19:12]. [00:19:30] I can't imagine that anyone who votes no tonight is doing anything other than indicating [00:20:00] that they don't trust the government to make incredibly momentous and important decisions at a very difficult time. But like I said, I am confident that the majority of parliamentarians will stand up to support our values, to stand up to support our democracy, and to stand up to support their fellow Canadians. [French 00:20:28].

David Akin: [00:20:30] David Akin, Global News. Thank you for taking our questions, and thank you for the kind words about supporting our work. I'd suggest the best way to do that, of course, is take an extended amount of time for questions from journalists. I heard what you said in reply to my friend, David Thurton, and I heard the very same similar lines repeated by Minister Mendicino, repeated by Minister Blair, where you don't want this to go on for one second longer. I really want to press you. Give us a specific power in the Emergencies Act which is vital right now, that is not present in the provincial emergency orders, [00:21:00] in the Criminal Code, and any other number of statutes that are [inaudible 00:21:03]. What specifically is in that act that is so vital right now out to protect Canadians?

Justin Trudeau: We saw for a number of days and weeks into the blockades that it was extremely difficult to get tow trucks to come and tow big rigs. One of the specific measures is an ability to compel tow truck drivers to come and do their jobs. When the Emergencies Act was brought in, [00:21:30] many tow truck companies said, "Okay, we'll do it." Didn't need to be compelled, but there were some companies that needed to be compelled under the Emergencies Act to remove trucks. We've seen, right now, that there are trucks holding in places like Ontario and [inaudible 00:21:48] and other places that have indicated a desire or an openness to returning to blockades right now. So, that is a power we may well need.

The [00:22:00] power to designate critical infrastructure like border crossings as not just the actual border crossing itself, which of course is protected under current legislation, but the approaches to broad border crossings. 15 kilometers of the road from Coutts, for example, or the municipal approaches to the Windsor crossing, that require police to be able to designate that as areas where people not just occupying, but indicating [00:22:30] a desire to go and occupy that intersection, can be turned away. Just in the past days, there was a convoy from Fort McMurray destined for Ottawa that was largely turned away at the Manitoba, Ottawa border, based on the laws and the powers in the Emergencies Act.

Now, this is not something that we want to imagine continuing indefinitely in Canada. We hope to only keep it in place for [00:23:00] a number more days. We will reevaluate every single day. But right now, when the situation is still of people prepositioning people, being out there, indicating that they are ready to blockade, to continue their illegal occupations, to disrupt Canadian's lives, we feel that this measure needs to remain in place while this emergency situation is still in place. I could give other occasions, but I'll turn to another question instead [00:23:30] to try and get as many as possible.

Lee Berthiaume: Sir, Lee Berthiaume, Canadian Press. Good to see you. You've said you don't want to keep the Emergencies Act any longer than necessary, but you have also said that you want to make some of the new powers around fundraising platforms reporting to FINTRAC permanent. I'm wondering what other powers you're looking at making permanent, whether other changes after this crisis have passed.

Justin Trudeau: One of the things that is important and right about the use of the Emergencies Act is there are already many mechanisms around review [00:24:00] and oversight, whether it's a parliamentary committee, whether it's an inquiry, after words, whether it's a need for openness and transparency, whether it's even court cases that are coming forward to challenge it. All those are part of the checks and balances that make sure that these actions we took are the right ones, which we know they are.

At the same time, there needs to be a reflection about misinformation and disinformation, [00:24:30] and how Canadians lives can be disrupted by. There needs to be a reflection on foreign funding of illegal actions in our country designed to disrupt or destabilize our democracy. There have to be reflections on our ability to keep our borders open and free flowing, and protect critical infrastructure, like the seat of our democracy. These are things that will be debated and reflect on [00:25:00] in time. We will work with parliamentarians to move forward in a way that is responsible and properly measured to react and proact in terms of what we see potentially coming in the coming years.

Speaker 1: Okay. Thank you for that. We are going to go on questions on Zoom. [French 00:25:20].

Speaker 14: [French 00:25:25] Minister Freeland. [French 00:25:28].

Chrystia Freela...: Okay. [French 00:25:46]. [00:25:30] Okay, merci.

Speaker 14: [French 00:29:13].

Chrystia Freela...: [French 00:29:18]. [00:26:00] Merci.

Speaker 1: [00:29:30] Okay. We're going to go to John Ibbitson, Globe and Mail.

John Ibbitson: Good morning, Prime Minister. Concerning the situation in Ukraine. If Russia were to recognize the independence of [Lushank 00:29:52] and Donetsk, and send troops into the region, would that be sufficient to trigger sanctions by Canada? And if it were not sufficient, why would that not be [00:30:00] the case?

Justin Trudeau: First of all, we continue to see Russia positioning itself and trying to create excuses or reasons to violate Ukrainian territorial integrity, to violate the sovereignty of Ukraine. We continue to stand against all such measures. We will fully stand for the entire territorial integrity of Ukraine, [00:30:30] and do not recognize any attempts to independently recognize or autonomize the separatist-occupied regions of Eastern Ukraine. Canada stands with Ukraine. Canada stands with its allies against this aggressive Russian [00:31:00] positioning, and will respond strongly and firmly with our allies in the case of any territorial violation of Ukraine.

John Ibbitson: Understood. I suppose, what we're asking for though is some sense of a threshold. What actions the Russians would need to take before Canada would feel justified indeed required to initiate a response?

Justin Trudeau: As our allies, as Americans, as Canada, [00:31:30] as European allies have been clear, any violation of Ukraine's current territorial integrity will be seen as a violation by Russia of some founding principles of the UN and of the rule of law as we practice it around the world right now.

Speaker 1: [00:32:00] Raymond Filion, TVA.

Raymond Filion: [French 00:32:25].

Justin Trudeau: [French 00:32:25].

Raymond Filion: [French 00:34:09].

Justin Trudeau: [French 00:34:19].

Speaker 1: We [00:34:30] have time [00:35:30] for one last question. We're going to go to Jacques Gallant, Toronto Star.

Jacques Gallant: Hi, good morning. Prime Minister, you mentioned earlier about oversight and you talked about the parliamentary committee. I'm wondering when will that committee be struck, and what exact will it be able to do? What exactly will its powers be?

Justin Trudeau: [00:36:00] Part of the rules around the formation of the Emergencies Act is the striking of a joint parliamentary committee between the House and the Senate to report back on the use of the Emergencies Act after the Emergencies Act had been in place, to talk about how it was used, and to report back in a fulsome way. The discussions are ongoing with the various parties on exactly that issue. David, do you want to speak [00:36:30] to that?

David Lametti: Sure. Thank you, Prime minister. Thank you, Jacques. It's a wide-ranging set of powers that the committee has to go back and look at. First of all, the declaration, the justifications contained in that declaration, any orders, as well as the implementation of those orders, as well as forward-looking advice for what we might want to do down the road. So, that committee has a wide-ranging set of responsibilities, I would say first, as well as powers. Thank you.

Jacques Gallant: [00:37:00] Thanks a lot. And Prime Minister, I wanted to ask you, again, this question that you got earlier, but I don't think I heard a response. Is tonight's vote a matter of confidence?

Justin Trudeau: Like I said, I can't imagine anyone voting against this bill as expressing anything other than a deep mistrust in the government's ability to keep Canadians safe at an extraordinarily important time. But like I also said, I am confident this bill is going to pass.

Speaker 1: [00:37:30] That is the end of our press conference. [French 00:37:33]. Thank you.

This is **EXHIBIT “B”**

to the Affidavit of

MADELEINE ROSS

sworn before me by video conference

this 28th day of February, 2022.

A handwritten signature in cursive script, reading "JananiS".

Janani Shanmuganathan

Speaker 1: Good afternoon. We are joined today by the Prime Minister, the Deputy Prime Minister, and ministers Lametti, Mendicino, and Blair. There will be a 20 minute opening statement, followed by 20 minutes... Sorry, there'll be an opening statement followed by 20 minutes of questions. 10 minutes in the room. 10 minutes on the phone. Prime Minister.

Justin Trudeau: Hello, everyone. [foreign language 00:17:52].

On Monday of last week, after days of dangerous and unlawful activities in our capital city and at many border crossings across the country, the federal government invoked the Emergencies Act. It was the responsible and necessary thing to do. We did it with three principles top of mind. First, restoring peace and order. Second, doing it the right way. And third, making sure that it was time limited.

The first point, restoring peace and order in our streets and restoring confidence in our institutions was top of mind. Public safety, as well as jobs and the economy were at risk. People were being harassed, small businesses were closing, factories were shutting down and trade was halted at our borders. Here in Ottawa and in other places in the country, there was evident of individuals wanting to undermine and even harm Canada's democracy. Their participation was believed to increase the potential for unrest and violence. We worked closely to support provinces and municipalities to get the situation under control, but as the weeks went by, it became obvious that provincial and local authorities needed more tools in order to enforce the law and protect Canadians. And that's exactly what the Emergencies Act provided to them.

[foreign language 00:19:49]

The second, when we invoked the Act, we needed to make sure we did it the right way. We'll always defend the rights of Canadians to peaceful assembly and to freedom of expression. As I said before, the Emergencies Act was created to flow from and uphold the Canadian charter of rights and freedoms. These measures had to be and were compliant with the charter. Parliamentarians debated and the house voted. We followed procedure, and it is critical that we continue to do so. That's why a joint committee of parliamentarians will be struck to review the declaration of emergency. Within 60 days, there will be an inquiry into the circumstances that led to the Emergencies Act being invoked. It will look at how we got there and why it was required. It could look at policing. The inquiry could also examine the funding, influence, and disinformation that supported the illegal blockades and occupations, both foreign and domestic.

[foreign language 00:21:33]

And finally, our third principle. We were very clear that the use of the Emergencies Act would be limited in time. When we invoked it. It would be in place for up to 30 days, but we said that we would lift it as soon as possible.

We've held updates and briefs with ministers and officials every day, often multiple times a day. And today after careful consideration, we're ready to confirm that the situation is no longer an emergency. Therefore the federal government will be ending the use of the Emergencies Act. We are confident that existing laws and bylaws are now sufficient to keep people safe. Of course, we'll continue to be there to support provincial and local authorities if and when needed.

And I want to reassure Canadians, law enforcement agencies are prepared to deal with anyone engaging in unlawful or dangerous activities. Police officers will continue to be there to protect our streets and neighborhoods within their jurisdictions.

[foreign language 00:23:17]

Going forward, it'll be important that we gain a fuller understanding of what gave rise to this kind of disregard for laws and threat to our democracy. We need to make sure our institutions are prepared and ready in the future. While the immediate emergency situation is over, this issue won't just go away. We need to constantly work to defend and improve our democracy at home and around the world.

[foreign language 00:24:43].

Canadians have been through a lot, and we have a lot of challenges ahead of us. Let's remember that we're fighting a virus, not each other. Let's work together. After two difficult and painful years, we have a lot of healing to do. And now is the time to be there for one another. Merci.

Speaker 1: Okay, we'll move the questions from the room. We'll start over here at this microphone with Jasmine from Radio Canada

Jasmine: [foreign language 00:25:28]

Justin Trudeau: [foreign language 00:25:46]

Jasmine: [foreign language 00:27:25].

Justin Trudeau: [foreign language 00:27:46]

Glen McGregor: Glen McGregor, CTV News. Prime Minister, within an hour's drive of where we are right now there are at least two encampments of protestors. They are vowing to hold the line, they say they aren't going to back down. And there is a real concern of people in this community they're going to come back. Are you willing to invoke the Act again, if police can't properly respond to that eventuality, or in other places like in Winnipeg today where we see another protest headed downtown?

Justin Trudeau: As we know, over the course of a couple of weeks, the barricades and occupations got implanted to a level that we felt last Monday that we needed to give time limited proportional, reasonable, charter compliant extra tools to our authorities to be able to remove those barricades and those occupations. This past weekend, we saw that happen. And as of Monday, Ottawa was clear of occupations and border crossings across the country were. We spent the last couple of days leaning in with public safety authorities, with police forces across the country, and ensuring that even as we recognize that the emergency looked like it was ending, the threat remained. But that they had the tools, that Canada has the tools in normal times, not in under an Emergencies Act to deal with the potential threat returning. And we got a high level of confidence that the existing tools that police forces have across the country will be sufficient to deal with further disruptions.

Glen McGregor: But Prime Minister, when you invoked the Act, you said it wasn't just about Ottawa. You said you needed to protect critical infrastructure, border crossings in particular, airports I believe were also listed there. Those are just as exposed as they were when you invoked the Act. What's different now for them?

Justin Trudeau: We saw, for example, the blockage of the Windsor bridge, the Ambassador Bridge in Windsor took a number of days. And there were some jurisdictional questions that prevented the local police of jurisdiction from being able to move in with sufficient abilities and authorities, to be able to remove the occupation that had ensconced itself in the approaches to our busiest border crossing. That was part of why, very much part of why and the threats to other border crossings in Coutts and Emerson and elsewhere, and the national nature of the threat that led us to conclude that this was an emergency that required the use of the Emergencies Act. But as I said, this was always proportional and time limited. And as we've gone through this past week, we have now seen and been assured by our police forces and jurisdictions across the country, that they now have sufficient tools in regular times to deal with any further challenges. And therefore we are pleased to be able to lift and revoke the Emergencies Act.

Speaker 5: [foreign language 00:32:12].

Justin Trudeau: [foreign language 00:32:12].

David Lametti: [foreign language 00:33:12].

Chrystia Freela...: [foreign language 00:33:41]

Speaker 5: [foreign language 00:34:57].

Justin Trudeau: [foreign language 00:35:08].

David Lametti: [foreign language 00:35:38].

Speaker 8: [foreign language 00:36:08].

Justin Trudeau: [foreign language 00:36:19].

Speaker 8: [foreign language 00:37:13].

Justin Trudeau: [foreign language 00:37:18].

Marco Mendicino: [foreign language 00:37:31]

Speaker 1: Okay. We'll move to the phones. First question, David Thurton, CBC.

David Thurton: Hi, Prime Minister. Do you still see the protest camps outside of Ottawa as a threat?

Justin Trudeau: Thank you, David. Let's be very clear. The threat continues. We do see, whether it's social media activity or people who continue to be focused on protesting and perhaps illegally protesting that we need to be monitoring. But the acute emergency that gave rise to the invocation of the Emergencies Act 10 days ago, that there were occupations so solidly implanted that the police didn't have the kind of resources or tools available to dislodge them, that emergency is now over. We spent the last two days hearing from law enforcement and from public safety experts who reassured us that the tools available to police to prevent further occupations, tools that were used quite effectively by police services in cities like Toronto and Quebec City over the past weeks, would be sufficient to prevent, even as people continue to threaten to restore blockades or occupations, it would be sufficient to use the tools regularly at hand for police services to prevent further emergencies.

David Thurton: So you still see these camps as a threat, but could you elaborate a bit more, Prime Minister? Do you see it as a threat to public safety? Do you see it as a threat to democracy? Do you see it as, as threat to Canadian values? Just if you could elaborate, that'd be great.

Justin Trudeau: I think people understand that there was a lot of anger and a lot of frustration directed at governments, directed at our democracy, directed at public health measures that were part of these blockades and these occupations. And those haven't ended. But allow me to be very clear. People are allowed to express their disagreements. People will always have the right to free expression, always have the right to freedom of assembly in this country. What you don't have the right to do is to blockade your fellow citizens, to cause pain and disruption in the daily lives of thousands upon thousands of Canadians, to put jobs at risk across Southwestern Ontario, and indeed the whole country. That's not a right people have. And that is something that we're going to continue to be very strong and vigilant against.

Speaker 1: Moving on to Émilie Bergeron, La Presse Canadienne.

Émilie Bergeron: [foreign language 00:41:17].

Justin Trudeau: [foreign language 00:41:59].

Émilie Bergeron: [foreign language 00:43:25].

Justin Trudeau: [foreign language 00:44:04].

Speaker 1: Tonda MacCharles, Toronto Star.

Tonda MacCharle...: Hi. Prime Minister, you mentioned that you want to be assured that institutions are ready for in the future if such an occurrence were to happen again. Specifically, what do you think needs change to avoid a similar entrenchment of some kind of protest that perhaps might even have more sinister abilities or motives? Specifically, what do you want to see change?

Justin Trudeau: Well, I think there are many lessons we have to draw from the past 10 days, or indeed the past few weeks. I think there are reflections on how our police of local jurisdictions are able to deal with certain threats that were not common in the past years. The mobilization through social media of extraordinarily motivated crowds is something that we need to reflect on and make sure that they have the tools to be able to manage. I think there are also reflections we have to have on misinformation and disinformation, and looking at how the role of foreign money and foreign influence in attempts to undermine or even destabilize our democracy are things that we will all need to lean in on as a country. But I certainly hope we're able to do that in a way that is thoughtful and inclusive and respectful of the range of voices and opinions that are out there. And always, always standing up for the fundamental rights and freedoms of Canadians, as laid out in the charter and as lived every day by Canadians right across the country.

Tonda MacCharle...: There are a lot of people who believe that in invoking this Act, you've now created a historical precedent that really actually set quite a low bar. There were no massacres, no assassinations in the street. You weren't facing some kind of militia threat. So what precedent do you feel you've set? Have you set such a low bar that this will be much easier for many governments in the future to use?

Justin Trudeau: I think people have seen from both the measured way the police responded, the extremely limited and proportional tools that were put forward, the full compliance, with the charter of rights and freedoms, the safeguards in place, and indeed the processes for accountability afterwards, whether it's the Committee of Parliamentarians or the inquiry or the court cases that are already underway challenging the use of the Emergencies Act. I don't think anyone feels that there was a low bar, or that this won't be fully scrutinized and reflected on. Indeed, we were very conscious that this Emergencies Act had never been invoked before. And we were very aware that there would be significant

scrutiny on our use of it. And that's why we were so focused on making sure that it was proportional, that it was reasonable, and as we demonstrate today, extremely time limited.

When the Act is invoked, it's in place for 30 days. After the vote on Monday, it could have been in place for another three weeks. But we committed and knew that verifying every single day, if it was still needed, was going to be key to demonstrating the limited and measured use of this tool. But we know that there will continue to be threats to Canada, to our democracy, to democracies around the world. And we cannot shy away from using tools that are necessary to maintain the safety and security of citizens. And that's exactly what we did in a responsible and proportionate way.

Speaker 1: Final question today is from Raymond Filion from TVA.

Raymond Filion: [foreign language 00:49:42].

Justin Trudeau: [foreign language 00:49:47].

Raymond Filion: [foreign language 00:51:45].

Justin Trudeau: [foreign language 00:51:58].

Speaker 1: Thank you. That concludes today's press conference. Thank you very much.

Justin Trudeau: [foreign language 00:52:56]

This is **EXHIBIT "C"**
to the Affidavit of
MADELEINE ROSS
sworn before me by video conference
this 28th day of February, 2022.



Janani Shanmuganathan



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Charges laid in relation to the unlawful protest in Ottawa

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FOR IMMEDIATE RELEASE: Sunday, February 27, 2022 11:40am

(Ottawa)–Today, the Ottawa Police Service charged Steeve CHARLAND, 48 years old, of Grenville, Quebec, in relation to the recent unlawful protest in Ottawa. He was arrested last evening by the OPP in the Vankleek Hill area.

The Criminal Investigations Section charged CHARLAND with:

- Mischief;
- Counselling to Commit the Offence of Mischief.

He is scheduled to appear in court today.

- 30 -

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